

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DAVID SCHLOSSER,

Petitioner,

v.

MELISSA ANDREWJESKI,

Respondent.

CASE NO. 2:22-1112 RJB-DWC

ORDER ON STIPULATED
MOTION FOR LEAVE TO FILE
AMENDED OBJECTIONS TO THE
REPORT AND
RECOMMENDATION

This matter comes before the Court on the Stipulated Motion for Leave to File Amended Objections to the Report and Recommendation. Dkt. 34. The Court has reviewed the motion and remaining file and is fully advised.

On August 8, 2022, Petitioner, *pro se*, filed this habeas corpus petition pursuant to 28 U.S.C. § 2254 challenging his March 15, 2019 judgment and sentence after his conviction by a jury for rape of a child in the first degree of his stepdaughter A.D. Dkt. 1. The Petitioner initially raised six grounds for relief. *Id.* He then filed an unopposed motion to withdraw Grounds 3, 5, and 6. Dkt. 25.

On May 18, 2023, a Report and Recommendation was filed. Dkt. 28. It recommends granting the Petitioner's unopposed motion to withdraw Grounds 3, 5, and 6. *Id.* The Report and Recommendation recommends denial of relief on the remaining Grounds 1, 2, and 4. *Id.* It

1 also recommends finding that an evidentiary hearing is not necessary and that a Certificate of
2 Appealability be denied. *Id.* The Petitioner, through counsel, filed objections to portions of the
3 Report and Recommendation objecting to recommendations regarding the denial of an
4 evidentiary hearing, denial of relief on Ground 1 and Ground 2, and the denial of the Certificate
5 of Appealability. Dkt. 30.

6 In his objections, regarding Ground 2, the Petitioner also argued that his Sixth
7 Amendment rights were violated when the trial court prohibited him from questioning A.D.'s
8 mental health counselor about what, if any, A.D. told her counselor of Petitioner's alleged sexual
9 abuse of A.D. Dkt. 30 at 17-19. This portion of Ground 2 was not in Petitioner's Petition (Dkt. 3
10 at 21) and appeared to be raised for the first time in this case in the objections.

11 On June 27, 2023, the case was re-referred to U.S. Magistrate Judge Christel for further
12 proceedings relating to Petitioner's argument that his Sixth Amendment rights were violated
13 when the trial court prohibited him from questioning A.D.'s counselor about what, if any, A.D.
14 told the counselor of Petitioner's alleged sexual abuse of A.D. Dkt. 32. The Report and
15 Recommendation, Petitioner's objections, and Respondent's response to the objections were
16 stricken, to be reset, when appropriate.

17 On July 27, 2023, Petitioner was ordered to file a motion to amend his original petition
18 by August 28, 2023 if he wished to proceed on his newly raised claim for violation of his Sixth
19 Amendment rights related to the trial court's limits on questions to A.D.'s counselor. Dkt. 33.

20 On August 25, 2023, the parties filed the instant stipulated motion. Dkt. 34. In this
21 motion, the Petitioner informs the Court that he no longer wishes to pursue the Sixth Amendment
22 claim. *Id.* at 2. He seeks permission from the Court for permission to amend his original
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1 objections to withdraw the newly raised claim (Dkt. 30 at 17-19). *Id.* Respondent does not
 2 object. *Id.*

3 DISCUSSION


4 The stipulated motion (Dkt. 34) should be granted. The Petitioner's objection, that he
 5 was denied his Sixth Amendment rights when the trial court prohibited questioning of A.D.'s
 6 counselor about what, if any, A.D. told the counselor of Petitioner's alleged sexual abuse of
 7 A.D., should be stricken. This objection will not be considered in whether to adopt the Report
 8 and Recommendation.

9 It appears based on the parties' stipulated motion, that the matter is ripe for decision. If
 10 that is not accurate, the parties should inform the Court what, if anything, remains by **August 31,**
 11 **2023.** The Report and Recommendation, the Petitioner's objections, and Respondent's response
 12 to the objections should be renoted for consideration. If the Court does not hear from the parties
 13 that the matter should be continued, the Report and Recommendation (Dkt. 28), Petitioner's
 14 objections (Dkt. 30) and the Respondent's response to the objections (Dkt. 31) should be renoted
 15 for **September 1, 2023.** The referral to the U.S. Magistrate Judge should be terminated.

16 **IT IS SO ORDERED.**

17 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
 18 to any party appearing pro se at said party's last known address.

19 Dated this 28th day of August, 2023.

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21 ROBERT J. BRYAN
 22 United States District Judge
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